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September 21, 2023

## VIA ECF & EMAIL

The Honorable Analisa Torres, U.S.D.J.  
U.S. District Court, Southern District of New York  
500 Pearl Street  
New York, NY 10007

**Re: *In re: Subpoena Issued on Third Party Benjamin Krause, Case No. 1:23-mc-00269-AT (underlying case: *Smarte Carte Inc. v. Innovative Vending Solutions, LLC, et al.*, Case No. 1:19-cv-08681-NLH-AMD (D.N.J.))***

### Status Report & Consent Letter Motion to Transfer

Dear Judge Torres:

This firm represents movants and defendants in the underlying action, Innovative Vending Solutions, LLC and Innovative Strollers, LLC. We write jointly on behalf of third party Benjamin Krause and plaintiff in the underlying action, Smarte Carte Inc., to provide a status report and to respectfully move for transfer of this miscellaneous action upon consent.

**Status Report:** On September 15, 2023, the parties in the underlying action had a conference and motion hearing before Magistrate Judge Ann Marie Donio of the District of New Jersey. At that hearing, Magistrate Judge Donio denied defendants' motion to stay the underlying action and granted defendants' motion to extend time for fact discovery until November 30, 2023. We attach copies of the New Jersey Court's orders for this Court's reference (D.I. 186 and 187 in 19-cv-8681).

**Consent Motion to Transfer:** The parties respectfully move to transfer this miscellaneous action to the District of New Jersey to be consolidated with the underlying action, Case No. 1:19-cv-08681-NLH-AMD (D.N.J.). This Court has discretion to transfer a motion related to a subpoena upon consent. "When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances." Fed. R. Civ. P. 45(f). The District of New Jersey is the issuing court for the subpoena subject to this miscellaneous

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action. All parties in the underlying action and Mr. Krause, the person subject to the subpoena, consent to transfer of this action to the District of New Jersey. The New Jersey court is well-versed in the issues pending in the underlying action and is equipped to resolve this motion to compel.

Counsel are available should the Court have any questions. The parties are submitting a courtesy copy of this letter to Magistrate Judge Donio in the underlying action.

Respectfully submitted,



Christopher R. Kinkade


Enclosures

cc: All Counsel of Record  
Hon. Ann Marie Donio, U.S.M.J.

GRANTED. The Clerk of Court is directed to transfer the case to the federal District of New Jersey.

SO ORDERED.

Dated: September 22, 2023  
New York, New York

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ANALISA TORRES  
United States District Judge